

NO. \_\_\_\_\_

IN THE COUNTY COURT

Plaintiff(s),

§  
§  
§  
§  
§  
§  
§  
§  
§

V.

AT LAW NO. 1

Defendant(s).

ELLIS COUNTY, TEXAS

**FINAL PRETRIAL SUBMISSION**

**(CPS Trial)**

(Updated October 2021)

**This Final Pretrial Submission must be filed no later than nine (9) days before the Final Pretrial Conference for the DFPS and seven (7) days before the Final Pretrial Conference for all other parties and all objections by any party to witnesses and exhibits must be made and delivered to opposing counsel no later than four (4) days before the Final Pretrial Conference. Lead counsel must attend the Final Pretrial Conference; the clients are not required to attend.**

Failure by a party to timely file their Final Pretrial Submission, where another party has timely filed their Final Pretrial Submission, may result in the exclusion of the delinquent party’s witnesses and exhibits and/or complete or partial postponement of the Final Pretrial Conference and the award of attorney’s fees for the continued hearing against the non-compliant party and/or attorney. The trial setting will be removed if all parties fail to file timely Final Pretrial Submissions. The Agreed Factual Stipulations, Witness Lists, Exhibit Lists and Jury Instructions (if applicable) should be emailed to the Court Coordinator ([cellcoordinator@co.ellis.tx.us](mailto:cellcoordinator@co.ellis.tx.us)) in Microsoft Word format concurrently with the filing of the hard copy submissions.

To eliminate needless duplication each party may adopt by reference the witness and exhibit lists of any other party, but realize that doing so will waive any objection to all witnesses or exhibits on the other party’s lists unless a specific exception and objection to a particular witness or exhibit is noted in the adoption by reference, such noting will preserve the objection to those particular witnesses or exhibits.

If a family law case or proceeding is tried before a jury, the jury shall be composed of 12 members, in all other cases the jury shall be composed of six members except as provided by the constitution, Section 25.0007(c), or other law. Govt. Code §25.0722(i).

This Final Pretrial Submission is prepared and submitted by:

---

ATTACHED HERETO ARE THE FOLLOWING, TO WIT:

1. **Contentions of the party are set forth in Exhibit A.**
2. **Contested issues of fact and law are set forth in Exhibit B. (One page or less per issue)**
3. **Agreed factual stipulations are set forth in Exhibit C.**

*...Only mutually agreed stipulations should be listed. This is not intended as a place to list a party's proposed stipulations.*

4. **Prior rulings of this Court as to the facts and laws believed to be relevant to the trial are set forth in Exhibit D.**
5. **Lists of fact witnesses are set forth in Exhibit E along with the subject matter of the testimony of each such witness. Included are all rebuttal and impeachment witnesses whose testimony can reasonably be anticipated at this time.**

*...The Court utilizes the provisions of Rule 103 Tex.R.Evid to rule on the legal admissibility of all lay witness testimony. The attorneys must present all reasonably anticipated evidentiary objections concerning lay testimony to the Court during the final pretrial conference or objection is waived.*

*...After receipt of opponent's Final Pretrial Submission, the Parties must confer in an attempt to resolve all objections concerning fact witnesses. All objections not resolved by agreement must be presented in writing and called to the attention of the Court for ruling at the final pretrial conference. All objections not timely presented and all objections for which a specific ruling is not timely obtained are waived.*

*...If the opinion of a lay witness complies with the requirements of Rule 701, Texas Rules of Evidence, it is sufficient to list such a witness in this exhibit as a fact witness rather than in the list of expert witnesses. If there is doubt as to whether such testimony may be expert testimony and possibly does not comply with the requirements of Rule 701, the witness must be listed as both a fact witness with the subject matter of the witness' testimony and as an expert witness along with a report containing the information required of an expert witness.*

6. **Names, addresses, telephone numbers and qualifications of expert witnesses are set forth in Exhibit F, together with the subject matter upon which the expert is expected**

**to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the bases of the mental impressions and opinions held by the expert. Any Daubert/ Robinson challenges must be stated and prepared for hearing no later than the FPTC. The Court has special instructions and checklists for all parties as to how the hearing will be conducted. A copy of the form may be requested by the attorneys from the Court Coordinator.**

*...The Court utilizes the provisions of Rule 103 Texas Rules of Evidence to rule on all expert testimony pursuant to the Daubert/Robinson standards. During the final pretrial conference, the attorneys must present all objections to the Court concerning expert testimony not previously ruled upon by the Court or objection is waived.*

*...A copy of the expert's report may be attached in satisfaction of this requirement if the report conforms to the requirements of the law and of this Court.*

*...All witnesses who are expected to provide any amount of expert testimony must be set forth in this list, including parties who are to testify as to the value of their own property and lay witnesses who are expected to render expert opinions as well as give factual testimony that exceeds the permissible limits of Rule 701 Tex.R.Evid (ex., an artisan such as a plumber, electrician or mechanic who is expected to opine concerning their specialized knowledge.) If there is any doubt as to whether Rule 701 Tex. R. Evid. is applicable, the Court requires that the lay witness be listed and treated both as a lay witness and as an expert.*

*...Uncooperative, non-retained experts who have dealt with a party and have unique factual information (such as treating physicians or mechanics) must be listed and designed as "non-retained" experts. The Court will consider granting extraordinary relief for non-retained expert witnesses who are uncooperative.*

*...Qualifications, mental impressions, facts known to the expert and opinions of the expert not disclosed in the expert's report as shown in Exhibit F will not be permitted as trial testimony.*

*...After receipt of opponent's Final Pretrial Submission, the Parties must confer in an attempt to resolve all objections concerning expert witnesses.*

- 7. All exhibits are certified by the attorney(s) as being in existence, pre-marked by the attorneys, listed with a fair and brief description attached hereto as Exhibit G and also provided in physical or electronic form to all opposing counsel.**

**...All listed and marked Exhibits which are not objected to, or where the objection has been overruled at the Final Pretrial Conference, are considered pre-admitted for trial and shall be admitted into evidence immediately before the first witness is called to testify at trial.**

*...The Court utilizes the provisions of Rule 103 Tex.R.Evid to rule on all exhibits, the legal admissibility of testimony and all other evidence as part of pretrial procedures. The attorneys must present all evidentiary objections to the Court during the final pretrial conference or objection is waived.*

*...The Parties must pre-mark all exhibits and list them with a fair and brief description of each exhibit. General descriptions should not be used (ex., "all exhibits attached to the*

*deposition of John Doe”; “all business records of ABC Company”) except in extreme situations and with leave of Court. Depositions and other written discovery should not be listed here but rather should be listed in Exhibits H & I. All listed exhibits must be available for examination by opposing counsel within a reasonable time and at a reasonable place prior to the Final Pretrial Conference.*

*...The parties must confer prior to the Final Pretrial Conference in an attempt to resolve all objections concerning exhibits. It is the burden of the objecting party to contact opposing counsel or make a good faith effort to do so concerning all objections.*

*...All objections not resolved by agreement must be presented in writing and called to the attention of the Court for ruling at the Final Pretrial Conference. All objections not timely presented and all objections for which a specific ruling is not timely obtained are waived.*

- 8. The depositions that will be offered into evidence at the trial are listed in Exhibit H. Included in this list are the depositions that will be offered into evidence (including witnesses who are available to testify at trial.) Shown and designated separately in Exhibit H are the depositions that may be offered of witnesses who are not reasonably expected to be present at trial.**

*...The Court will consider admission into evidence of summaries of depositions as permitted by Rule 1006, Tex. R. Evid. Such summaries must be fair and reasonable representations of the underlying testimony. Proposed written summaries should be presented to opposing counsel five days prior to the date the Final Pretrial Submission is due to be filed so as to permit a reasonable time in which to examine and consider whether the summary is fair and reasonable. Objections must be in writing and presented to opposing counsel no later than three days prior to the date the Final Pretrial Submission is due to be filed. The proposed summary and the unresolved objections must be filed with the Final Pretrial Submission to be ruled upon at the Final Pretrial Conference, in default of which all objections are waived.*

*...All videotaped depositions as well as written depositions must be edited to include only relevant testimony, and the edited lines and pages proposed for use must be reduced to writing in the form of referenced page and line numbers and served on opposing counsel not less than five days before the Final Pretrial Submission is due to be filed to enable counsel to make objections. The objecting party shall contact counsel for the opposing party in a good faith attempt to resolve all objections prior to the final pretrial conference and shall present written objections to the opposing counsel not less than three days before the Final Pretrial Submission is due to be filed. The objections must be filed with the Final Pretrial Submission, in default of which all objections are waived.*

- 9. The undersigned party certifies that all written discovery, including interrogatory answers, responses to requests for production, deposition testimony, affidavits submitted in connection with motions for summary judgment and information relating to expert witnesses have been supplemented as required by the Texas Rules of Civil Procedure.**

- 10. The Motions listed in Exhibit J will be ruled upon by the Court at final pretrial conference if called to the Court’s attention.**

**11. Estimated time of trial is shown on Exhibit K.**

**12. (If Jury Trial) Attached as Exhibit L (and provided to the Court in Microsoft Word format) are the requested jury instructions and questions (in a form ready to be presented to the jury).**

**13. The party certifies that this dispute cannot be settled and all reasonable means of settlement have been exhausted prior to filing this Final Pretrial Submission. This further certifies that the original and copies were properly served on all counsel with a copy furnished to the trial judge.**

Signed on \_\_\_\_\_

\_\_\_\_\_

Attorney(s) for \_\_\_\_\_